

FILED

DEC 3 1976

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-627

CABLE-VISION, INC., a Florida Corporation, and
TELE-MEDIA COMPANY OF KEY WEST,
Its Successor in Interest,
Appellants,

vs.

WILLIAM A FREEMAN, JR., HARRY S. PRITCHARD,
JOHN W. PARKER, HARRY HARRIS and WILLIAM
CARTER, As and Constituting THE BOARD OF COUNTY
COMMISSIONERS OF MONROE COUNTY, a Political
Subdivision of the State of Florida,
Appellees.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF FLORIDA

RULE 16 MOTION TO DISMISS AND/OR AFFIRM

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ON APPEAL FROM THE SUPREME COURT
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I.

INTRODUCTION

The parties will alternately be referred to herein as they stand in this Court, and as follows: appellants, Cable-Vision, Inc., a Florida corporation, and Tele-Media Company of Key West, its successor in interest, as "CABLE-VISION;" and appellees, William A. Freeman, Jr., Harry S. Pritchard, John W. Parker, Harry Harris and William

Carter, as and constituting The Board Of County Commissioners of Monroe County, a political subdivision of the State of Florida, as "COMMISSIONERS." The symbols "A" and "AA" shall stand respectively for the appendices filed by appellants and appellees. Contemporaneously herewith appellees have filed a request to certify additional portions of the record. Conformed copies of these portions of the record are reproduced, infra, as a part of appellees' appendix.

All emphasis appearing in this motion is supplied by counsel unless otherwise noted.

II.

THE MOTION—GROUNDS FOR DISMISSAL AND/OR AFFIRMANCE

The appellees file this their Rule 16 motion to dismiss and/or affirm upon the following separate, distinct and alternative grounds:

1. The subject appeal is not within the jurisdiction of this Court because it was not taken in conformity to statute or applicable Supreme Court Rules.
2. The appeal does not present a substantial federal question.
3. The purported federal question raised was not timely or properly raised in the state court of final appellate jurisdiction.
4. The purported federal question raised was not expressly decided by the state appellate court/courts of final appellate jurisdiction.
5. The judgment appealed rests on an adequate non-federal basis.

III.

OPINIONS BELOW

The following pertinent orders, decisions and opinions have been rendered in the premises by the Florida courts:

1. On March 12, 1974, the Circuit Court for Monroe County, Florida, entered a final declaratory judgment holding that COMMISSIONERS' authorization of a television translator system was not an unconstitutional legislative impairment of obligations of the existing exclusive franchise for cable television granted CABLE-VISION. (A 1-4) CABLE-VISION bypassed the District Court of Appeal, Third District, of Florida, and took a direct appeal to the Supreme Court of Florida.

2. On October 2, 1974, the Supreme Court of Florida—on motion of COMMISSIONERS—entered its order transferring CABLE-VISION'S appeal to the District Court of Appeal, Third District, holding that said court, and not the Supreme Court, had appellate jurisdiction over the matter. (AA 1)

3. On December 9, 1975, the District Court of Appeal entered a decision and opinion affirming the declaratory judgment in part and reversing in part. This decision is reported at 324 So. 2d 149. (A 5-17) CABLE-VISION *appealed* said decision to the Supreme Court of Florida. CABLE-VISION *did not* file a timely petition for writ of certiorari.

4. On May 27, 1976, the Supreme Court entered an order granting COMMISSIONERS' motion to dismiss the appeal. (A 18)

5. On July 8, 1976, the Supreme Court of Florida entered an order denying CABLE-VISION'S motion to treat its previously filed notice of appeal as a petition for writ of certiorari. (A 19)

IV.

NO JURISDICTIONAL GROUNDS

COMMISSIONERS reject the statement of jurisdictional grounds contained in CABLE-VISION'S jurisdictional statement as improper and incorrect. The reasons why this Court is without jurisdiction and/or should refrain from exercising jurisdiction over this matter are detailed below.

V.

STATUTES AND ORDINANCE INVOLVED

The statutes and ordinance involved here are: Chapter 65-1916, Laws of Florida (A 29-35); Chapter 65-1927, Laws of Florida (A 35-44); and Ordinance 5-1973 of Monroe County, Florida. (A 25-29)

VI.

QUESTION PRESENTED

The question presented by CABLE-VISION'S jurisdictional statement and COMMISSIONERS' motion to dismiss and/or affirm is whether or not this Court is without jurisdiction and/or should refrain from exercising jurisdiction over the subject appeal on one or more of the following grounds:

1. The subject appeal is not within the jurisdiction of this Court because it was not taken in conformity to statute or applicable Supreme Court Rules.

2. The appeal does not present a substantial federal question.

3. The purported federal question raised was not timely or properly raised in the state court of final appellate jurisdiction.

4. The purported federal question raised was not expressly decided by the state appellate court/courts of final appellate jurisdiction.

5. The judgment appealed rests on an adequate non-federal basis.

VII.

STATEMENT OF CASE

Sans the editorialized and merits argumentative, COMMISSIONERS accept the statement of case contained at pages 4-7 of CABLE-VISION'S jurisdictional statement as basically correct insofar as it goes. For the sake of completeness, however, COMMISSIONERS are constrained to include herein the following chronology of legal events:

1. *March 12, 1974*—the trial court entered final declaratory judgment in the within cause which, in pertinent part, provides:

* * *

"4. That the plaintiff notwithstanding the existence of a valid franchise may itself engage in the business of furnishing television to its citizens by means of television broadcast translator stations. It should be noted that in 1972 the Home Rule Amendment to the State Constitution granted broad powers to counties, including Monroe, to enact ordinances similar to Ordinance 5-1973 relating to the establishment of translator stations and that such Ordinance is within the ambit of the Home Rule Amendment.

"This Court does not construe the franchise agreement to prohibit the plaintiff from furnishing to the citizens of Monroe County television broadcast translator station services. *This is based upon the principle that exclusive franchises from a governmental body to a private corporation must be strictly construed. The franchise here provides for 'direct wire reception of television' and is silent as to the possible use of translator stations.*

"The actions of the plaintiff in authorizing a translator system *was not* a legislative impairment of an existing contract between the defendant and the plaintiff so as to render the authorizing ordinance relating to translator stations unconstitutional. Neither Chapter 65-1916 nor Chapter 65-1927 prohibit the plaintiff from engaging in activities which might impair the quality of or the value of the defendant's franchise *but only prohibit the plaintiff from granting new or additional franchises to others.* Although there may be the suggestion that implicit in the two chapters is a provision that the plaintiff will not compete, nevertheless such suggestion ignores the well-established principle that public grants are strictly construed and that nothing should pass to the grantee of such a franchise by implication. The reason behind this rule of construction is that the object and end of all government is to promote the common interests of the people, their recreation, welfare and prosperity and it is never assumed that the governmental authority intended to diminish this power. Governments should never be presumed to surrender this power because the entire community has an interest in preserving it undiminished. The Statutes (Chapter 65-1916 and Chapter 65-1927), the existing ordinance 5-1973 and the fran-

chise agreement disclose that what was given to the defendant was not an exclusive franchise to furnish all forms of television reception but rather it was an exclusive right to furnish cable television services only." (A 3-4)

* * *

2. April 8, 1974—CABLE-VISION bypassed the District Court of Appeal, Third District of Florida, and took a direct appeal from the Circuit Court's final declaratory judgment to the Supreme Court of Florida. (AA 3-4)

3. June 20, 1974—COMMISSIONERS filed a motion with the Supreme Court of Florida to dismiss or transfer the appeal taken by COMMISSIONERS on grounds that—pursuant to the provisions of the Florida Constitution and appellate rules—the Florida Supreme Court did not have jurisdiction over an appeal merely passing on the validity of a county ordinance, such jurisdiction being vested in the appropriate District Court of Appeal. (AA 5-6)

4. October 2, 1974—the Supreme Court of Florida entered an order granting COMMISSIONERS' motion to transfer, and transferring the subject appeal to the District Court of Appeal, Third District. (AA 1)

5. December 9, 1975—the District Court of Appeal, Third District, entered a decision affirming in part and reversing in part and specifically holding that the CABLE-VISION franchise was not exclusive, and that the subject county ordinance was proper on grounds similar to those relied upon by the Circuit Court. (A 5-17) Pursuant to the provisions of the Florida Appellate Rules, the District Court's decision was rendered on January 22, 1976, upon denial of CABLE-VISION'S timely filed petition for rehearing, and CABLE-VISION had until thirty (30) days thereafter, February 21, 1976, in which to commence ap-

appropriate further proceedings in the Supreme Court of Florida, to wit: to commence an appeal or file a petition for writ of certiorari with the Supreme Court of Florida.

6. *February 20, 1976*—CABLE-VISION filed a notice of appeal seeking review of the decision rendered by the District Court of Appeal. (AA 7-8)

7. *April 14, 1976*—COMMISSIONERS filed with the Supreme Court of Florida a motion to dismiss CABLE-VISION'S appeal from the District Court decision on grounds that the Supreme Court was without jurisdiction over the matter since the District Court decision passed on the validity of a county ordinance and not on the validity of a State Statute or Federal Statute or Treaty. (AA 9-10)

8. *May 27, 1976*—the Supreme Court of Florida entered its order granting COMMISSIONERS' motion and dismissing CABLE-VISION'S appeal to the Supreme Court from the decision rendered by the District Court on jurisdictional grounds. (AA 11)

9. *June 1, 1976*—CABLE-VISION filed with the Supreme Court of Florida a petition—under the aegis of Section 59.45, Florida Statutes—asking that Court to treat its erroneously filed notice of appeal as a petition for writ of certiorari. (AA 12-14)

10. *July 8, 1976*—the Supreme Court of Florida entered its order denying CABLE-VISION'S motion to treat the erroneously filed notice of appeal as a petition for writ of certiorari.

Ultimately, CABLE-VISION commenced the within proceedings in this Court.

VIII.

ARGUMENT—MOTION TO DISMISS OR AFFIRM SHOULD BE GRANTED

Article V, Section 3(b), Florida Constitution, relating to Supreme Court jurisdiction provides:

* * *

“(b) Jurisdiction. The supreme court:

“(1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from orders of trial courts and decisions of district courts of appeal initially and directly passing on the validity of a state statute or a federal statute or treaty, or construing a provision of the state or federal constitution.

“(2) When provided by general law, shall hear appeals from final judgments and orders of trial courts imposing life imprisonment or final judgments entered in proceedings for the validation of bonds or certificates of indebtedness.

“(3) May review by certiorari any decision of a district court of appeal that affects a class of constitutional or state officers, that passes upon a question certified by a district court of appeal to be of great public interest, or that is in direct conflict with a decision of any district court of appeal or of the supreme court on the same question of law, and any interlocutory order passing upon a matter which upon final judgment would be directly appealable to the supreme court; and may issue writs of certiorari to commissions established by general law having statewide jurisdiction.

“(4) May issue writs of prohibition to courts and commissions in causes within the jurisdiction of the

supreme court to review, and all writs necessary to the complete exercise of its jurisdiction.

"(5) May issue writs of mandamus and quo warranto to state officers and state agencies.

"(6) May, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

"(7) Shall have the power of direct review of administrative action prescribed by general law."

* * *

Article V, Section 4(b), Florida Constitution, relating to District Court of Appeal jurisdiction, provides:

* * *

"(b) Jurisdiction.

"(1) District courts of appeal shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts, including those entered on review of administrative action, not directly appealable to the supreme court or a circuit court. They may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court.

"(2) District courts of appeal shall have the power of direct review of administrative action, as prescribed by general law.

"(3) A district court of appeal or any judge thereof may issue writs of habeas corpus returnable before the court or any judge thereof or before any circuit judge within the territorial jurisdiction of the court. A district court of appeal may issue writs of

mandamus, certiorari prohibition, quo warranto, and other writs necessary to the complete exercise of its jurisdiction. To the extent necessary to dispose of all issues in a cause properly before it, a district court of appeal may exercise any of the appellate jurisdiction of the circuit courts."

* * *

Manifestly, Florida has a two-tier appellate court system. The Florida District Courts of Appeal were not established as intermediate courts or more way stations to the Supreme Court, but as courts of final appellate jurisdiction. When the people of Florida adopted the amendment to Article V of the Florida Constitution, establishing the District Courts of Appeal, they were assured that most litigation in the state would not go beyond those courts. A narrow scope of jurisdiction of the Supreme Court was specified in Article V of the Constitution, and the Article has been so applied and construed by that Court. See *Short v. Grossman*, Fla. 1971, 245 So. 2d 217. As recently stated by Justice England in his concurring opinion in *Golden Loaf Bakery, Inc. v. Charles W. Rex Construction Co.*, Fla. 1976, 334 So. 2d 585:

* * *

"This court's conflict jurisdiction was created in 1957, at the same time the legislature established the District Courts of Appeal. The obvious and limited purpose of that form of appellate review was to allow us to clarify the law when it becomes necessary under the new court structure created by the Constitution. Where our views on a matter of law are not absolutely necessary, we should not express them. Moreover, the constitutional rule of our District Courts as courts of last resort is unnecessarily diminished to the extent we use this discretionary jurisdictional tool to express our-

selves in situations which do not require our clarification."

* * *

In sum, the Florida Supreme Court for the most part exercises discretionary direct conflict jurisdiction, and will only—indeed, may constitutionally only—take jurisdiction of a direct appeal under very limited circumstances. It does have jurisdiction of a District Court decision "initially and directly passing on the validity of a state statute or a federal statute or treaty." It does not have jurisdiction of a District Court decision which merely passes on the validity of a county ordinance.

Reverting to the case at Bar, for the reasons which follow, this Court should grant the subject motion for dismissal and/or affirmance:

1. The declaratory judgment appealed passed only on the validity of a county ordinance. Thus, the Supreme Court of Florida did not have jurisdiction over the initial direct appeal filed by CABLE-VISION, and properly transferred the initial appeal to the District Court of Appeal, Third District.

2. The decision rendered by the District Court of Appeal, Third District, passed only upon the validity of a county ordinance. The District Court—constitutionally—was thus, in the absence of a showing of the existence of Florida Supreme Court direct conflict jurisdiction, the state court of final appellate jurisdiction which disposed of this matter. If CABLE-VISION desired to appeal to this Court from the District Court of Appeal decision, it should have done so immediately and timely. CABLE-VISION did not immediately and timely file such an appeal.

3. Instead, CABLE-VISION commenced an obviously improper direct appeal to the Supreme Court of Florida.

The Supreme Court obviously had no jurisdiction because the decision sought to be reviewed merely passed upon the validity of a county ordinance. The Supreme Court of Florida, therefore, properly granted COMMISSIONERS' motion to dismiss the improper appeal. The Supreme Court of Florida's order of dismissal was no more and no less than a technically proper dismissal of an appeal improvidently taken. That order in no sense constitutes the type of opinion, decision or judgment which may be appealed to this Court since it did not pass on any legal question save the jurisdictional question.

4. Subsequent to the entry of the order of dismissal by the Supreme Court of Florida, CABLE-VISION filed a petition to consider the notice of appeal as a petition for writ of certiorari. This without any showing of the existence of direct conflict, or even the attempt to make such a showing. In the abstract, there was no direct conflict. The Supreme Court of Florida properly on jurisdictional grounds denied CABLE-VISION'S petition. The order of denial in no sense constituted the type of opinion, decision or judgment which can be appealed to this Court.

5. Entirely aside and apart from the foregoing, it is manifest that the subject appeal does not present a substantial federal question, and/or the purported federal question raised was not expressly decided by the Supreme Court of Florida, and/or the Supreme Court order appealed rests on adequate non-federal bases. Indeed, this record reflects that the same is true of the District Court of Appeal decision which should have been appealed to this Court in the first instance.

The following decisions of this Court mandate dismissal and/or affirmance on a record such as this: *Randall v. Board of Commissioners of Tippecanoe County, Indiana*, 261 U.S. 252, 67 L. Ed. 637, 1923; *Williams v. State of Florida*,

399 U.S. 78, 90 S. Ct. 1893, 26 L. Ed. 2d 446, 1970; and *Michigan-Wisconsin Pipeline Co. v. Calvert*, 347 U.S. 157, 74 S. Ct. 396, 98 L. Ed. 583, 1953.

IX.

CONCLUSION

In view of the foregoing, it is respectfully submitted that the subject motion to dismiss and/or affirm must be granted.

Respectfully submitted,

PAUL E. SAWYER, ESQ.

County Attorney for Monroe County

P. O. Box 571

Key West, Florida 33040

and

HORTON, PERSE & GINSBERG

410 Concord Building

Miami, Florida 33130

Attorneys for Appellees

By: EDWARD A. PERSE

CERTIFICATE OF COUNSEL

I, EDWARD A. PERSE, one of the attorneys for THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, et al., appellees herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 24 day of November, 1976, I served copies of the foregoing Rule 16 Motion to Dismiss and/or Affirm on the several parties thereto as follows:

1. On Cable-Vision, Inc., a Florida corporation, and Tele-Media Company of Key West, its successor in interest, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to its attorneys of record as follows:

Julius F. Parker, Jr., Esq.

Madigan, Parker, Gatlin, Truett

& Swedmark

P. O. Box 669

318 North Monroe Street

Tallahassee, Florida 32302

Michael G. Kushnick, Esq.

Rose and Kushnick

919 Eighteenth Street, N. W.

Washington, D. C. 20006

EDWARD A. PERSE

HORTON, PERSE & GINSBERG

410 Concord Building

Miami, Florida 33130

Attorneys for Appellees

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APPENDIX

IN THE SUPREME COURT OF FLORIDA

Case No. 45,402

July Term, A. D. 1974

Wednesday, October 2, 1974

CABLE-VISION, INC., a
Florida corporation,
Appellant,

vs.

WILLIAM A. FREEDMAN, JR.,
ET AL.,
Appellees.

Upon consideration of appellees' Motion to Dismiss or
Transfer and Response thereto:

It appearing to the Court that the issues involved in
the appeal in the above cause are matters within the juris-
diction of the District Court of Appeal, Third District of
Florida, therefore, pursuant to the provisions of Florida
Appellate Rules, it is ordered that said cause be transferred
to said District Court for consideration and determination
after five (5) days from this date unless, in the meantime,
attorneys of record for the parties, or any of them shall
bring to the attention of the Court that the cause is one
which should be heard and determined by this Court.
Unless such cause is shown by writing filed in this Court
within the time stated, the Clerk shall complete the trans-
fer in accord with the above directive without further
order.

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ADKINS, C. J., ROBERTS, ERVIN, BOYD and McCAIN,
JJ., concur

Y

CC: Hon. W. P. Carter, Clerk
Hon. Ralph W. White, Clerk
Hon. James W. Kehoe, Judge
Horton & Perse
(Hon. Mallory H. Horton)
Hon. Paul E. Sawyer
Hon. Julius F. Parker, Jr.
Hon. Tom Harris

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IN THE CIRCUIT COURT OF THE SIXTEENTH
JUDICIAL CIRCUIT IN AND FOR MONROE
COUNTY, FLORIDA.

Case No. 73-786-CA-17

WILLIAM A. FREEMAN, JR., BARRY S. PRITCHARD,
JOHN W. PARKER, HARRY HARRIS and WILLIAM
CARTER, as and constituting THE BOARD OF COUNTY
COMMISSIONERS OF MONROE COUNTY, a political
subdivision of the State of Florida,
Plaintiffs,

vs.

CABLE-VISION, INC., a Florida corporation, and THE
STATE OF FLORIDA,
Defendants.

NOTICE OF APPEAL

The Defendant, Cable-Vision, Inc., a Florida corporation, takes and enters its appeal to the Supreme Court of Florida to review the order, judgment or decree of the Circuit Court of the Sixteenth Judicial Circuit in and for Monroe County, Florida, bearing date the 12th day of March, 1974, and rendered and recorded in O. R. Book 572, Pages 528-531, on March 25, 1974, in the Public Records of Monroe County, Florida. The nature of the Order appealed from is a Final Declaratory Judgment passing directly on the constitutionality of a state statute in the form of a County Ordinance of Monroe County, No. 5-1973. The Ordinance was attacked as an unconstitutional impairment of existing contractual rights and obligations and the Court held:

"The actions of the Plaintiff in authorizing a translator system was not a legislative impairment of an existing

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contract between the defendant and the plaintiff so as to render the authorizing ordinance relating to translator stations unconstitutional."

Appeal is taken directly to the Supreme Court of Florida under the provisions of Rule 2.1 a (5) (a) of the Florida Appellate Rules.

All parties to said cause are called upon to take notice of the entry of this appeal.

/s/ Julius F. Parker, Jr.
Julius F. Parker, Jr.
Madigan, Parker, Gatlin, Truett &
Swedmark
P. O. Box 669—318 N Monroe Street
Tallahassee, Florida 32302
Attorneys for Defendant, Cable-
Vision, Inc., a Florida corpora-
tion.

I HEREBY CERTIFY that a copy of the foregoing Notice of Appeal has been furnished to Mallory Horton, Esquire, of Horton and Perse, 410 Concord Building, Miami, Florida 33130, and Paul E. Sawyer, Esquire, County Attorney for Monroe County, P. O. Box 571, Key West, Florida 33040, Attorneys for Plaintiffs, and to Tom Harris, Esquire, Assistant Attorney General, Capitol Building, Tallahassee, Florida, 32304, by mail, this 8th day of April, 1974.

/s/ Julius F. Parker, Jr.
Julius F. Parker, Jr.

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IN THE
SUPREME COURT OF THE STATE OF FLORIDA

Case No. 45,402

CABLE-VISION, INC., a Florida corporation,
Appellant,

vs.

WILLIAM A. FREEMAN, JR., HARRY S. PRITCHARD,
JOHN W. PARKER, HARRY HARRIS and WILLIAM
CARTER, as and constituting THE BOARD OF COUNTY
COMMISSIONERS OF MONROE COUNTY, a political
subdivision of the State of Florida,
Appellees.

MOTION TO DISMISS OR TRANSFER

COME NOW the Appellees, by their attorneys, and move the Court to dismiss this appeal and/or to transfer the same to the District Court of Appeal, Third District of Florida. As grounds for this motion these Appellees would show that the Appellant in its brief, page 4, states as follows:

"Because of this direct ruling on the constitutionality of Ordinance No. 5-1973, this appeal was taken directly to the Supreme Court of Florida under the provisions of Rule 2.1 a (5) (a) of the Florida Appellate Rules."

Article V, Section 3 of the Florida Constitution, 1968 Revision, Subsection (b) (1) provides as follows:

"(b) Jurisdiction. The supreme court:

(1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from orders of trial courts and decisions of district courts of appeal initially and *directly passing on the validity of a state statute or a federal statute or treaty, or construing a provision of the state or federal constitution.*" (Emphasis supplied)

Rule 2.1 a (5) (a) of the Florida Appellate Rules is simply a restatement of the constitutional provisions cited above.

By the Appellant's own admission only an ordinance of Monroe County has been passed upon by the Circuit Court. County ordinances are no different than municipal ordinances and this Court is *DRESNER v. CITY OF TALLAHASSEE*, Fla. 1961, 134 So.2d 228, held that a direct appeal would not lie from a decision passing on the validity of a municipal ordinance. In effect, holding that a municipal ordinance could not be classified as a "state statute" to the same effect is *ARMSTRONG, et al v. CITY OF TAMPA*, Fla. 1958, 106 So.2d 407.

WHEREFORE, these Appellees respectfully pray that this Court will dismiss this appeal or in the alternative transfer this appeal to the appropriate court, to-wit: the District Court of Appeal, Third District of Florida.

Horton & Perse
410 Concord Building
Miami, FL 33130
and
Paul E. Sawyer, Esquire
Post Office Box 571
Key West, FL 33040
Attorneys for Appellees
By: Mallory H. Horton
Mallory H. Horton

I HEREBY CERTIFY that a true copy of the foregoing Motion to Dismiss or Transfer has been furnished by mail to Julius F. Parker, Jr., Esquire, Post Office Box 669, Tallahassee, FL 32302, Attorney for Appellant, and to Tom Harris, Esquire, Assistant Attorney General, Department of Legal Affairs, Civil Division, 222 West Pensacola Street, Tallahassee, FL 32304, this 20th day of June, 1974.

By: Mallory H. Horton
Mallory H. Horton

IN THE
DISTRICT COURT OF APPEAL FOR THE
THIRD DISTRICT OF FLORIDA

Case No. 74-1408

CABLE-VISION, INC., a Florida corporation,
Appellant,

vs.

WILLIAM A. FREEMAN, JR., HARRY S. PRITCHARD,
JOHN W. PARKER, HARRY HARRIS and WILLIAM
CARTER, as and constituting THE BOARD OF COUNTY
COMMISSIONERS OF MONROE COUNTY, a political
subdivision of the State of Florida,
Appellees.

NOTICE OF APPEAL

Cable-Vision, Inc., Defendant-Appellant, takes and enters its appeal to the Supreme Court of Florida to review the opinion of the District Court of Appeal of Florida, Third District, dated December 9, 1975, and revised upon rehearing and dated January 22, 1976. The nature of the Order appealed from is an Opinion affirming in part and reversing in part a final judgment of the Circuit Court for Monroe County, Florida. All parties to said cause are called upon to take notice of the entry of this appeal.

/s/ Julius F. Parker, Jr.
Julius F. Parker, Jr.

/s/ Jack M. Skelding, Jr.
Jack M. Skelding, Jr.
Madigan, Parker, Gatlin, Truett
& Swedmark
P. O. Box 669-318 N. Monroe St.
Tallahassee, FL 32302
Attorneys for Cable-Vision, Inc.

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CERTIFICATE

I HEREBY CERTIFY that a copy of the foregoing Notice of Appeal has been furnished by United States Mail to Mr. Mallory H. Horton, Horton, Perse & Ginsberg, 410 Concord Bldg., Miami, FL 33130; Mr. Paul E. Sawyer, County Attorney for Monroe County, P. O. Box 571, Key West, FL 33040 and Mr. Tom Harris, Assistant Attorney General, Department of Legal Affairs, Civil Division, 222 West Pensacola Street, Tallahassee, FL 32304, this 20th day of February, 1976.

/s/ Jack M. Skelding, Jr.

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IN THE SUPREME COURT OF FLORIDA

Case No. 48,962

CABLE-VISION, INC., a Florida corporation,
Appellant,

vs.

WILLIAM A. FREEMAN, JR., HARRY S. PRITCHARD,
JOHN W. PARKER, HARRY HARRIS, and WILLIAM
CARTER, as and constituting THE BOARD OF COUNTY
COMMISSIONERS OF MONROE COUNTY, a political
subdivision of the State of Florida,
Appellees.

MOTION TO DISMISS

COME NOW the appellees by their attorneys and show to the Court that the appellant has taken a full or plenary appeal to this Court from the opinion and decision of the District Court of Appeal filed December 9, 1975 and has asserted certain Assignments of Error directed to said opinion.

The appellees move the Court to dismiss the appeal on the grounds that the Court's jurisdiction is improperly invoked. The District Court in its opinion and decision filed December 9, 1975, a copy of which is attached hereto as modified by its Order of January 22, 1976 a copy of which latter Order is also attached as an exhibit to this motion, clearly demonstrates that the District Court of Appeal did not initially and directly pass on the validity of a State's Statute or a Federal Statute or treaty or construe a provision of the State or Federal Constitution. Appellant's Assignment of Error Number 9 erroneously concludes that the District Court of Appeal held invalid Chapter 65-1916 Laws of Florida but appellees respectfully suggest that a fair reading of the District Court of Appeal's opinion of

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December 9, 1975 will adequately demonstrate that Court did not initially pass on the validity of Chapter 65-1916 Laws of Florida, nor did it hold said law invalid. As a matter of fact the District Court of Appeal did not pass upon the validity of that Statute but simply held that since Chapter 65-1916 and 65-1927 were passed at the same session of the Legislature the last enactment was controlling and therefore the Legislature had not granted to CABLE-VISION an exclusive franchise.

WHEREFORE, the appellees respectfully pray that this Court will, upon consideration of the opinion and decision of the District Court of Appeal of December 9, 1975 dismiss this appeal.

Respectfully submitted,

Paul E. Sawyer

and

Horton, Perse & Ginsberg

410 Concord Building

Miami, Florida 33130

Attorneys for Appellees

By /s/ Mallory H. Horton

Mallory H. Horton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed to Madigan, Parker, Gatlin, Truett & Swedmark, P. O. Box 669, 318 N. Monroe Street, Tallahassee, Florida 32302 and to Tom Harris, Assistant Attorney General, Capitol Building, Tallahassee, Florida 32304 this 14 day of April, 1976.

/s/ Mallory H. Horton

Mallory H. Horton

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IN THE SUPREME COURT OF FLORIDA District Court of Appeal, Third District 74-1408

Case No. 48,962

January Term, 1976

Thursday, May 27, 1976

CABLE-VISION, INC., ETC.,

Appellant,

vs.

WILLIAM A. FREEMAN, JR., ET AL., as and constituting
THE BOARD OF COUNTY COMMISSIONERS OF
MONROE COUNTY, ETC.,

Appellees.

Upon consideration of the Motion to Dismiss filed by attorneys for appellees and Response thereto, it is ordered that said motion is granted and this appeal be and is hereby dismissed.

OVERTON, C.J., ROBERTS, ADKINS, SUNDBERG AND
HATCHETT, JJ., CONCUR

Y

CC: Hon. W. P. Carter, Clerk
Hon. Ralph W. White, Clerk
Hon. James Kehoe, Judge
Hon. Julius F. Parker, Jr.
Hon. Jack M. Skelding, Jr.
Hon. Paul E. Sawyer, Hon.
Mallory H. Horton
Hon. Paul Sawyer
Hon. Tom Harris

IN THE SUPREME COURT OF FLORIDA

Case No. 48,962

CABLE-VISION, INC., a Florida corporation,
Appellant,

vs.

WILLIAM A. FREEMAN, JR.; HARRY S. PRITCHARD;
JOHN W. PARKER; HARRY HARRIS, and WILLIAM
CARTER, as and constituting THE BOARD OF COUNTY
COMMISSIONERS OF MONROE COUNTY, a political
subdivision of the State of Florida,
Appellees.

**PETITION UNDER FLORIDA STATUTES,
SECTION 59.45**

The Appellant, Cable-Vision, Inc., by its undersigned counsel, respectfully petitions the Court, pursuant to the provisions of Florida Statutes, Section 59.45, to treat the appeal filed herein as a Petition for Certiorari, to allow Cable-Vision, Inc. thirty days within which to file a formal Petition for Certiorari with supporting jurisdictional brief, and in support thereof would show the Court:

1. The Notice of Appeal was filed herein by Cable-Vision, Inc. on February 20, 1976. Cable-Vision's brief would, therefore, have been due in the Supreme Court of Florida on April 30, 1976. The Appellee's Motion to Dismiss the appeal was filed on April 14, 1976, and Cable-Vision's response to the Motion to Dismiss on April 21, 1976. The Court's Order of Dismissal is dated May 27, 1976, and does not make any reference whatsoever to Cable-Vision, Inc.'s request in its response to the Motion to Dismiss that the appeal be treated as Certiorari, pursuant to Section 59.45, Florida Statutes.

2. Cable-Vision, Inc. represents to the Court that it believes that there are at least ten decisions of the Supreme Court of Florida with which the decision of the District Court of Appeal for the Third District herein is in direct conflict so that this Court should review this case by certiorari. Since Cable-Vision, Inc. believed that it had the right to appeal to this Court, it has not had the opportunity to present what it believes to be direct conflicts, nor has this Court has the opportunity to consider whether it does in fact have jurisdiction under conflict certiorari.

3. Cable-Vision, Inc. is prepared to file with this Court within thirty days from its decision herein, a formal Petition for Certiorari with supporting jurisdictional brief.

4. The provisions of Section 59.45, Florida Statutes, clearly set forth the policy that the right to appellate review should not be denied merely because a litigant mistakenly styles its application to an appellate court as an appeal rather than a Petition for Certiorari, and this Court should not deny to Cable-Vision, Inc. its right at least to seek conflict certiorari in the Supreme Court.

WHEREFORE, Petitioner, Cable-Vision, Inc., respectfully petitions the Court to treat the appeal herein as a Petition for Certiorari, to allow thirty days within which for Cable-Vision to file a Petition for Certiorari and supporting jurisdictional brief.

Respectfully submitted,

/s/ Julius F. Parker, Jr.

Julius F. Parker, Jr.

Madigan, Parker, Gatlin, Truett
& Swedmark

P. O. Box 669—318 N. Monroe
Street

Tallahassee, Florida 32302

Attorneys for Appellant

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I HEREBY CERTIFY that a copy hereof has been furnished to Mr. Mallory H. Horton, Morton, Perse and Ginsberg, 410 Concord Building, Miami, Florida 33130; Mr. Paul Sawyer, County Attorney for Monroe County, P. O. Box 571, Key West, Florida 33040; and to Mr. Tom Harris, Assistant Attorney General, Department of Legal Affairs, Civil Division, 222 W. Pensacola St., Tallahassee, Florida 32304; by mail, this 1st day of June, A. D. 1976.

/s/ Julius F. Parker, Jr.
Julius F. Parker, Jr.

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IN THE SUPREME COURT OF FLORIDA

Case No. 48,962

July Term, 1976

Thursday, July 8, 1976

CABLE-VISION, INC., ETC.,

Appellant,

vs.

WILLIAM A. FREEMAN, JR., ET AL., as and constituting
THE BOARD OF COUNTY COMMISSIONERS OF
MONROE COUNTY, ETC.,

Appellees.

On consideration of the Petition Under Florida Statutes, Section 59.45 filed by attorneys for appellant and Response thereto,

IT IS ORDERED that said petition is denied.

Y

CC: Hon. W. P. Carter, Clerk
Hon. Ralph W. White, Clerk
Hon. James Kehoe, Judge
Hon. Julius F. Parker, Jr.,
Hon. Jack M. Skelding, Jr.
Hon. Mallory H. Horton,
Hon. Paul E. Sawyer
Hon. Paul E. Sawyer
Hon. Tom Harris